

EXHIBIT "B"

STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL PURCHASES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- 1. Offer and Acceptance:** The Purchase Order is an offer by the City of Sunnyvale ("City") to enter into a contract; and any of the following acts constitute Supplier's acceptance of the Purchase Order and all terms and conditions stated therein: (a) Supplier's execution and delivery to City of Supplier's own acknowledgment form; (b) Supplier's delivery of any goods ordered; or (c) Supplier's acceptance of any payment from City.
- 2. Prices:** All prices shall be as stated in the Purchase Order and are firm and not subject to escalation. Supplier represents and warrants that the prices set forth in the Purchase Order are at least as low as those currently being quoted by Supplier to commercial or government users for the same goods, in like quantities, under similar circumstances.
- 3. Taxes:** This purchase is subject to all applicable California sales and use taxes. City is exempt from federal excise tax and will provide an exemption certificate, upon request.
- 4. Terms of Payment:** Payment terms shall be net thirty (30) days from the date of receipt of invoice or acceptance of goods, whichever occurs last. If City is entitled to a cash discount, the period of computation shall commence on the date of receipt of invoice or acceptance of goods by City, whichever occurs last. City may set off any amount owed by Supplier to City against any amount owed by City to Supplier under the Purchase Order. City shall endeavor to pay each invoice within thirty (30) days, but shall not be responsible to Supplier for additional charges, interest or penalties due to failure to pay within that period.
- 5. Quantities:** Supplier shall deliver the exact quantities specified in the Purchase Order. City reserves the right to reject incomplete deliveries and to return at Supplier's risk and expense excess quantities delivered.
- 6. Packaging and Shipment:** Goods shall be packaged, marked and otherwise prepared for shipment by Supplier in suitable containers in accordance with sound commercial practices. Supplier shall include an itemized packing list with each shipment.
- 7. Delivery:** Time is of the essence in the performance of the Purchase Order. If delivery of goods cannot be made at the specified time, Supplier shall promptly notify City of the earliest possible date for delivery. Notwithstanding such notice, if Supplier, for any reason whatsoever, fails to deliver goods within the time specified, City may terminate the Purchase Order or any part thereof without liability except for goods previously delivered and accepted. City's receipt or acceptance of all or part of a nonconforming delivery shall not constitute a waiver of any claim, right or remedy City has under the Purchase Order or applicable law.
- 8. Title and Risk of Loss:** The Purchase Order shall specify an FOB ("free on board") point, which shall be either the shipping point or the destination of the goods. If the Purchase Order specifies FOB destination, all shipping charges shall be prepaid by Supplier in full and included in the unit price. Supplier retains title to the goods and risk of loss until the goods have reached the designated destination. If the Purchase Order specifies FOB shipping point, Supplier shall prepay all shipping charges, route the goods on the least expensive common carrier in compliance with the required delivery date, and add shipping charges to the invoice as a separate line item. Buyer assumes title to the goods and risk of loss at the shipping point. No shipping charges will be allowed unless specified.
- 9. Inspection and Rejection:** Goods shall be received subject to City inspection, testing, approval and acceptance at City premises notwithstanding any prior payment for such goods. Goods rejected by City as not conforming to the Purchase Order may be returned to Supplier at Supplier's risk and expense and shall not be replaced by Supplier without written authorization from City. Substitutions are not permitted except upon specific written authorization of City.
- 10. Warranties:** In addition to any other express or implied warranties, Supplier warrants that all goods delivered under the Purchase Order will be new; suitable for the use intended; of the grade and quality specified; free from all defects in design, material and workmanship; in conformance with all samples, drawings, descriptions and specifications furnished by City; in compliance with all applicable federal, state, and local laws and regulations; and free of liens and encumbrances. These warranties shall not be deemed to exclude Supplier's standard warranties or other rights or

warranties which City may have or obtain. At its expense and option, Supplier shall replace or repair any goods not conforming to the foregoing warranties. If, after notice, Supplier fails promptly to replace or repair any such goods, Supplier shall promptly refund to City the full purchase price paid by City for such goods.

11. Compliance with Laws: (a) Supplier shall comply with all applicable governmental laws, ordinances, codes, rules, regulations, programs, plans and orders in the performance of the Purchase Order.

(b) Supplier shall be in full compliance with any and all permit or licensing requirements in connection with the manufacture, sale, shipment and/or installation of the goods specified in the Purchase Order.

(c) If, in connection with the specified goods, Supplier is required to comply with the Occupational Safety and Health Act's hazardous communications standard, Supplier agrees to provide copies of the applicable Material Safety Data Sheets at the time of delivery of the goods.

12. Safety and Health Requirements: Goods supplied shall comply with all federal and state Occupational Safety and Health Administration requirements and with all California safety and health requirements.

13. Assignment: Supplier shall not delegate or subcontract any duties or assign any rights or claims under the Purchase Order without City's prior written consent.

14. Waiver: Failure of City to enforce any provision of the Purchase Order shall not constitute a waiver or relinquishment by City of the right to such performance in the future nor of the right to enforce any other provision of the Purchase Order.

15. Severability: If any provision of the Purchase Order is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Purchase Order did not contain the particular provision held to be invalid.

16. Patents, Copyrights or Trademarks: Supplier shall hold harmless and fully indemnify City and its officers, employees and agents from all damages or claims for damages, costs or expenses in law or equity that may arise for any infringement of the patent right, copyright or trademark of any person as a consequence of the use by City or any of its officers, employees or agents, of goods supplied under this Purchase Order.

17. Change Orders: City shall have the right to revoke, amend, or modify the Purchase Order at any time by issuance of a written Change Order. No verbal revocations, amendments or modifications shall be held binding on City; and City is not required to compensate Supplier for goods not authorized by written Change Order. Supplier's receipt of City's written Change Order without response received by City within ten (10) days or Supplier's shipment or other performance reflecting the change, whichever occurs first, shall constitute Supplier's acceptance of the change without any price or other adjustment.

18. Breach of Contract: Should Supplier breach any of the provisions of the Purchase Order, City reserves the right to cancel the Purchase Order upon written notice to Supplier and obtain such goods from another source. If a greater price than that named in the Purchase Order is paid for such goods, the excess price shall be charged to and collected from the Supplier. City shall have any and all remedies provided under the Uniform Commercial Code in the event of a breach of contract by Supplier.

19. Governing Law; Public Records: The Purchase Order shall be governed by and construed in accordance with the laws of the State of California as interpreted by the California courts, and any litigation arising out of the Purchase Order shall be conducted in the courts of the State of California. California law requires that the contents of the Purchase Order be open to inspection and copying by the public.

20. Work to be Completed on City Premises by Supplier: In the event that Supplier is required, as part of its fulfillment of the terms of the Purchase Order, to install goods or perform any other work on City premises, Supplier assumes entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury or alleged injury (including death) or damage to property, sustained or alleged to have been sustained in connection with or to have arisen out of the performance of such work by Supplier.

21. Force Majeure: Neither party to the Purchase Order shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable

control. City may terminate the Purchase Order upon written notice after determining such delay or default will reasonably prevent successful performance of the Purchase Order.

22. Entire Agreement: The Purchase Order, which includes any and all additional documents incorporated therein by reference, sets forth the entire agreement between Supplier and City with respect to the purchase of the goods.

23. Additional or Inconsistent Terms: Any term or condition set forth in any acknowledgment form provided to City by Supplier which is in any way different from, inconsistent with, or in addition to the terms and conditions of the Purchase Order will not become a part of the Purchase Order nor be binding on City. If Supplier objects to any term or condition set forth therein, this objection must be in writing and received by City's Buyer identified on the Purchase Order prior to Supplier's delivery of product(s). Notwithstanding such notice, waiver or modification of any term or condition shall occur only if agreed in writing by City.